

13 April 1972

MEMORANDUM FOR: General Counsel

Larry--

Attached is Harry Eisenbeiss' memo commenting on the draft Headquarters Regulation on classification circulated at the last Deputies Meeting. Although I have some problems with the tone of the memo, I feel that most of his points are well taken.

It seems to me that steps have to be taken before we can even consider such a regulation. These would include:

1. Analyze the Executive Order to identify
 - a. Those provisions that are mandatory
 - i. Consider various ways to comply
 - ii. Select the most practical and least costly way
 - b. Those provisions where we have flexibility
 - i. Describe the options and the pros and cons of each from a policy point of view
 - ii. Tentatively select the options which are best from a policy point of view
 - iii. Test them for practicality and cost
 - iv. Select those that have the best combination for policy, practicality, and cost

2. Prepare a paper which covers the items above with recommendations for consideration by the Director. (Our forthcoming meeting [] would be ideal for this.)
3. Once we have the Director's views we can proceed in the drafting of a regulation for implementing the decisions.

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There is no question in my mind that we need your leadership in identifying the mandatory and flexible provisions. Furthermore, your conversations with Young and others in the White House and your general experience will be indispensable in considering the policy aspects. CRS and OS can assist in dealing with the questions of practicality and cost.

I strongly recommend that you take the initiative in getting this project off dead center.

You should also note that I have had some inquiries about whether the Director will provide guidance to the rest of the Intelligence Community on these matters.

STAT

[]
EDWARD W. PROCTOR
Deputy Director for Intelligence

Attachment:
Eisenbeiss' memo

Distribution:
Original - Addressee w/copy att.
1 - Executive Director w/copy att.
1 - D/CRS w/o att.

10 April 1972

MEMORANDUM FOR: Deputy Director for Intelligence

SUBJECT: Draft HR on Classification
and Declassification

1. This memorandum, prepared at your request, contains initial comments on the attachment to Mr. Osborn's 4 April 1972 memorandum, Working Draft to Implement Executive Order 11652 (Annex B). Paragraph 11 contains recommendations.

2. In defense of the drafter, the Executive Order is not a model of clarity, simplicity or effective communication. Only a lawyer in need of business could love it.

3. The Working Draft compounds the problem. I am almost certain that it was totally composed with scissors and scotch tape and without use of thought. It should be burned and the process of drafting started anew.

4. Before the redrafting starts, some basic questions should be answered. Some stem from the draft itself, other questions result from the organization and processes of the Agency. The basic questions are:

5. Does the Director wish to set up an effective and efficient declassification mechanism and to abide by the spirit as well as the letter of

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Declassification

E.O. 11652 (the Working Draft is intended to do the converse--i.e., minimize declassification, avoid automatic declassification and, I presume, to so diffuse Agency responsibility for declassification that nobody can ever get hung for failure to perform)?

6. Where does the Director want to locate authority and responsibility for whatever declassification system? Presently, responsibility is mostly in CRS; authority is scattered among OS and the chain of command as the IG Report on CRS noted and deplored. (The Working Draft further diffuses the loci of authority and responsibility by adding--as required by E.O. 11652--a CIA member to an NSC committee and a new intra-Agency committee on overseeing declassification. See Annex A.)

7. Does the Director wish to utilize the provision of E.O. 11652 to establish long-term (e.g., 50-year) automatic declassification? From the practical and mundane point of view of the operator of a repository, automatic declassification at whatever the necessary and safe time interval is the only workable and economic procedure for ever achieving declassification. Automatic expiration of a classification, at a time set when the document is created and stamped on the face of the document, is the only way to handle effectively and efficiently such problems as how to change the classification on what will soon be miles of computer-outputted microfilm. There are many such problems and each solution will be costly in money, time, and manpower unless the solution is provided in advance. (The Working Draft ignores both the opportunity and requirement posed by paragraph 5B of E.O. 11652:

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Declassification

"In each case /exemption from the General
Declassification Schedule/ such official shall
specify in writing...unless impossible, a date
or event for automatic declassification.")

8. How does the Director wish to deal with
the Archivist of the United States? The E.O. seems
to assign to the Archivist custodial and declassifi-
cation responsibility for documents that are more
than 30 years old (possibly solving some storage
space problems) and specifically charges him with
declassification of material in Presidential
libraries. (The Working Draft makes incomprehensible
reference to the Archivist.)

9. Once these questions are answered, redrafting
can begin. Redrafting should occur under the direction
of Mr. Houston because only he apparently knew what
the text of E.O. 11652 means as opposed to what it
says. The redrafting must begin with an outline,
enabling like parts to be properly grouped and proper
subtitles to be utilized. The redrafting group should
include at least Mr. Houston and representatives from
OS, CRS, and other units with major repository res-
ponsibility. With answers to the above questions in
hand, additional bodies will probably be unnecessary
and would get in the way. The drafting group should
have free access to call on Agency officials in order
to resolve other questions as they arise.

10. This memorandum does not speak in detail to
specific problems in the Working Draft but there are
many. A few examples are:

- The paper may mis-state the right
to delegate the responsibility to classify
at a SECRET level.

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Declassification

- The CIA Classification/Declassification Control Officer, the Director/OS, and the D/CRS have overlapping or duplicative duties.
- The difference is not clear between the responsibilities of the Intra-Agency Classification/Declassification Review Committee and the CIA Classification/Declassification Control System.
- The Working Draft lacks essential data necessary to implement it even in its present form; e.g., it speaks to the problem of classifying portions of a given document but provides no useful guidance on when and how to do this.
- The Working Draft ignores portions of E.O. 11652; e.g., the requirement to try to put a declassification date on documents that are excepted from the declassification schedule.
- The Working Draft fails to consider the implications of other sections of the E.O.; e.g., how to handle the physical problem of marking such material as microfilm and digital tape, and although the Director, CRS, is more or less stated to be the channel for reclassification and declassification notices, the Working Draft does not provide a context for the function.

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Declassification

- The Working Draft specifies that the CIA Classification Control Officer (presently a GS-14) will adjudicate in conflicts on classification and declassification. This is obviously impractical. A recent case in point, involving payroll forms, caught the Classification Control Officer between the Office of Finance and the CI Staff. Neither, of course, was willing to let a CRS GS-14 make the decision.

11. Recommendations:

STAT I recommend that E.O. 11652 be placed on the agenda for discussion with the DCI [] that you attempt to gain Mr. Houston's support for that inscription and that you try to get Mr. Houston to make the presentation.

STAT I strongly recommend that answers be obtained for the questions in paragraphs 5, 6, 7, and 8. I recommend that you attempt to have the DCI direct a redraft under Mr. Houston's direction as outlined in paragraph 9. I strongly recommend that the existing Agency Security Committee under [] of OS have nothing to do with the redraft.

[]
H. C. EISENBEISS

Director, Central Reference Service

Attachments: a/s

1:50

~~Mr. Proctor~~/Mr. Walsh --

Telephone call from Mr. Eisenbeiss:

STAT [] and John Warner spent about two hours this morning in CRS discussing Agency regulations to implement EO 11652. Warner says that Mr. Houston does not want a committee to redraft the regulation and that the General Counsel's staff has been directed to do an analysis of the Order and to redraft the regulation, which is fine as far as I am concerned. I think that Warner and [] recognize that the redraft must at least pay lip service to the President's desire for declassification and that whatever structure is created must be congruent with Agency lines of authority. Most of my complaints are at least recognized as having some validity. They have some realizations of the physical problems involved.

STAT

Annex A

1. An effective Agency declassification program requires clear delegation by the DCI of sufficient authority to make it work as well as his personal and continuing participation in the effort. To date no significant declassification has occurred because he has not evidenced desire for it and because an uncertain system has been allowed to evolve that is patently unworkable. At minimum E.O. 11652 seems to require clear designation by the DCI of a structure and system that will achieve what the President wants. The system proposed in the working paper makes the likelihood of declassification even more remote because authority and responsibility are even more uncertainly located and ill defined. The Working Draft never actually tells anybody to declassify anything at any time!

2. The chart on page 3 attempts to illustrate the mechanism proposed in the Working Draft. Some responsibilities are assigned in several places, some in none, and the links between the responsibilities are not clearly defined.

3. In my view, such a structure is useless except as window dressing (and it will never make House and Garden as window dressing) because the basic CIA rule for declassification is: "Get The Originator's Permission". This may well be the rule that the DCI wishes to preserve. If so, there is no need or utility for a complex, extra chain of command structure and the HR can be clear and simple. The HR should specify that the chief of an office, division or independent unit shall take action to review and declassify 30 year old material produced by that unit, a precursor or a unit absorbed. If he wishes to declassify the material, the holder of the record copy (in some cases, the unit itself; in others, C/Records Center or D/CRS) should be notified and accordingly should modify the face of the record copy and notify interested persons.

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Either D/CRS or D/OS could be assigned responsibility for extra-CIA notification.

4. If the head of the originating unit does not wish to declassify, he should (in accord with E.O. 11652) forward it through the relevant DD to the DCI with a recommendation on when it can be declassified, explanation of why it cannot now be declassified, a statement of which loophole permits continued classification, and an approval line for the DCI himself.

5. D/OS could keep the record of persons entitled to classify.

6. D/CRS could annually prepare lists of holdings that are the "Official Copy" for use by the head of the producing unit, and could serve as the extra-Agency contact point. OS could also assume that responsibility.

7. Chief, Records Center could report to Ex Dir, OS, or Deputy Director involved lists of holdings of declassification age. Many, many other details are required but the system ought to have relevance to the location of responsibility and authority. A complex committee structure will be useful only if a facade, rather than a working system, is desired or if the DCI wishes to give to the structure the authority and responsibility to act on its own judgment and without recourse to the original classifier, his successors, or his superiors.

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Summary of Significant Points of Impact on the Agency's Classification System Resulting From the Implementation of Executive Order 11652

Classified information must be reviewed systematically for the purpose of downgrading, declassification, retirement or destruction at the earliest possible time. (page 4)

Classified intelligence information is exempt from the General Declassification Schedule unless it is clear that sources or methods will in no way be jeopardized. (page 5)

Records will be kept to show the identity of the individual who authorized the original classification. (page 5)

The Director is required to appoint a representative to serve on an Inter-Agency Classification Review Committee and to designate a senior member of his staff to be responsible for ensuring compliance with E.O. 11652. The staff officer will chair the Intra-Agency Classification Review Committee. (pages 6 & 7)

A classification/declassification control system is established. (pages 7-11)

Each person having classifying authority will be held accountable for the propriety of the classifications attributed to him. (page 15)

Each document must show on its face its classification, whether it is subject to or exempt from the General Declassification Schedule, the office of origin, the date of preparation and classification. To the extent practicable each document is to be marked to indicate which portions are classified, at what level, and which portions are not classified. (page 16)

A declassification and downgrading schedule is established. (pages 23-25)

Material exempted from the General Declassification Schedule must be reviewed 10 years after the date of origin. (pages 25 & 26)

Information classified after 1 June 1972 shall be automatically declassified after 30 years except that which the Director personally determines in writing to require continued protection. (page 28)

Information classified before 1 June 1972 and more than 30 years old shall be systematically reviewed for declassification by the Archivist of the United States and will keep separate only such information as is specifically identified by the Director for continued protection. (pages 28 & 29)

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4 APR 1972

MEMORANDUM FOR: Deputy Director for Support

**SUBJECT : Working Draft to Implement
Executive Order 11652**

1. This memorandum is for information only.
2. Attached is a working draft designed to implement the provisions of Executive Order 11652. It is only a working draft at this time because in Section 6 of the Executive Order there is a provision that the President acting through the National Security Council will issue policy directives on access, marking, safe-keeping, accountability, transmission, disposition and destruction of classified information and material. As these directives are received, appropriate changes will be made in this draft and other regulations.



Howard J. Osborn
Director of Security

Attachment

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